

June 21, 2018

Mr. Eugene Vurgaftman
Baltimore County Public Schools
9610 Pulaski Park Drive, Suite 204
Baltimore, MD 21220

Re: Hernwood Elementary School
 9919 Marriottsville Road
 Forest Conservation Variance
 Tracking #04-18-2713

Dear Mr. Vurgaftman:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on June 11, 2018. This request proposes to base the afforestation required by Section 33-6-111 of the Forest Conservation Law on the 3.1-acre limit of disturbance (LOD) rather than the entire 19.1-acre property to renovate the existing Hernwood Elementary School. The request also includes the removal of four specimen trees: a 31-inch DBH red oak in good condition, a 30-inch DBH red oak in good condition, a 40-inch DBH red oak in good condition, and a 32-inch DBH Norway spruce in good condition. Renovations will include construction of a new parking lot in an existing grass area and a new entrance to this lot from Marriottsville Road, along with an asphalt overlay to the existing parking lot and bus loop. The project will not impact any forested areas. Using the LOD as the net tract area on the forest conservation worksheet would require the applicant to provide 0.5 acre of afforestation instead of the 1.9 acres required under full compliance.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all

beneficial use of his property. The petitioner is already realizing significant use of the property without the proposed renovations. Consequently, full application of the law to the entire property would not deprive the applicant of all beneficial use of the property, only affect the cost of complying with this law. Additionally, the new construction could be redesigned to avoid the specimen trees. Therefore, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The variance request is being made to reduce project costs rather than general conditions of the neighborhood. Therefore, the petitioner's plight is due to unique budgetary circumstances not associated with general conditions in the neighborhood. Consequently, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The school has existed for decades in this neighborhood, which is predominantly residential. Granting the variance to facilitate the completion of the school improvements will not alter the essential character of the neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any streams, wetlands, floodplains, steep slopes, or large contiguous forests. Furthermore, storm water management (SWM) will be provided in accordance with Baltimore County's SWM Law. As a result, the proposed variance will not adversely affect water quality. Consequently, we find that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any prior actions affecting the property to necessitate this variance request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of DEPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Reducing the planting obligation based on the LOD for the improvements to the school would be consistent with the spirit and intent of the Forest Conservation Law. This is especially true given the minimal area of disturbance and the fact that no buffers or forest would be impacted. Therefore, this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code contingent upon the following conditions:

1. The LOD shall be limited to the 3.1-acre area shown on the plans accompanying the variance application.
2. The 0.5 acre of afforestation shall be addressed by payment of a \$10,890.00 fee in lieu of planting by August 1, 2018.
3. Mitigation for the removal of the three native specimen trees will be addressed by a payment of a \$3,056.49 fee by August 1, 2018. Note that no mitigation is required for the removal of the nonnative Norway spruce.
4. The following note must be on all plans for this project:

A variance was granted on June 21, 2018 by Baltimore County Department of Environmental Protection & Sustainability to allow afforestation requirements to be based on the 3.1-acre limit of disturbance for the school improvements rather than the entire 19.1-acre property, as well as the removal of four specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including payment of a fee in lieu of specimen tree mitigation.

5. A final forest conservation plan shall be submitted to and approved by EPS staff prior to grading and sediment control plan approval.
6. Granting this variance does not exempt future development activities on this property from full compliance with the Forest Conservation Law.

It is the intent of this Department to approve this variance. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

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If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/lbe

c. Merrill Plait, Baltimore County Public Schools

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

BCPS Representative's Signature

Date

Printed Name